

REMARKS

Status of the Claims

Claims 1-13 remain pending in the present application, Claims 14-47 having been canceled as directed to non-elected claims in response to a restriction requirement. Claims 1, 6, 9, and 11 have been amended to correct typos or to provide a clearer definition.

Claims Rejected Under 35 U.S.C. § 112 First Paragraph

The Examiner has rejected Claims 1-13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner asserts that it is unclear who or what performs some of the steps recited in Claim 1. The Examiner asserts that Claim 1 does not clearly recite who or what “automatically” “creates a plurality of proposals,” “selects one of the plurality of proposals,” and “revises the plurality of proposals,” or how these steps are performed.

Applicants respectfully submit that a step performed automatically is performed by a computing device in response to a software program that is being executed on the device, as will be clearly evident to a person of ordinary skill in this art, particularly, based upon the teaching of the specification of this application. For example, applicants' specification teaches details about: "a software program" "creating a plurality of proposals," "selecting one of the plurality of proposals," and "revising the plurality of proposals," as indicated by the following quote:

A software program that carries out the scheduling process **automatically creates a plurality of proposals** that specify when the job might prospectively be scheduled during a defined time period (a schedule domain), such as the normal hours in which a business is open on a specific day of the week. The proposals are created as a function of each service and the time dependency of each service specified, and as a function of the time availability of each resource that can be used to perform each service needed to do the job. Each proposal indicates a time instance at which the job can be initiated during the defined time period. The proposals are preferably created well before the job is actually scheduled, but alternatively, can be created “on the fly,” to make an appointment using data previously input that define the resources and the current time availability. Based upon a time criteria that is specified, **the software program automatically selects one of the plurality of proposals** that was previously created to make an appointment to do the job. Furthermore, having made an appointment, **the software program automatically revises the plurality of proposals** that were created to take into consideration the resources used by the one that was selected in making the appointment. The software program accommodates changes in the time availability of resources that are required to perform the specific proposal that was selected when revising the proposals, since resources allocated to the proposal used for the appointment may no longer be available for other appointments. (See applicants’ specification, page 3, lines 14 – 33 – emphasis added.)

1 Applicants respectfully submit that steps “enabling an operator” are performed by a software program
2 providing an opportunity (i.e., enabling) to enter criteria or make selections within a user interface of
3 the software program. Claim 1 has been amended to clarify that “a desired time for starting the job”
4 is provided by “a person.” The person can be the operator, or can be a customer who contacts a Web
5 site to schedule a job, using the software program. Accordingly, the rejection of Claims 1-13 under
6 35 U.S.C. § 112, first paragraph should be withdrawn, because the specification does indeed provide
7 enabling support for these claims.

8 Claims Rejected under 35 U.S.C. § 112 Second Paragraph

9 The Examiner has rejected Claims 1-13 under 35 USC § 112, second paragraph, as being
10 indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants
11 regard as their invention. Claims 1 and 12 are specifically rejected because “the system does not actually
12 positively recite these steps.” Applicants do not understand this rejection. The system is not reciting
13 anything. These claims are method claims that enable the scheduling of a job (Claim 1), and of additional
14 jobs (Claim 12) using a software program running on a computing device. The software program
15 implements the steps of the method by providing an opportunity for the operator (or a person) to enter or
16 choose parameters as indicated below. Applicants respectfully suggest that the Examiner discuss this
17 issue with his supervisor, since the claims clearly define the invention with sufficient detail to enable one
18 of ordinary skill in the art to understand this novel method.

19 Claim 11 is specifically rejected because the Examiner asserts that the term “substantially” is not
20 defined by the claim, the specification does not provide a standard for ascertaining the requisite degree,
21 and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.
22 Applicants respectfully disagree for the reasons set forth below.

23 Discussion of what Applicant Regards as the Invention

24 The Examiner appears to assert that because Claim 1 does not recite that a computer system does
25 not specify “services,” “time dependencies of services,” and “resources,” the method as claimed does not
26 point out and distinctly claim the subject matter that applicants regards as their invention. Claim 1 clearly
27 indicates that as a step of the method, an operator is *enabled* to specify “services,” “time dependencies of
28 services,” and “resources.” Applicants respectfully submit that Claim 1 recites a method for scheduling
29 appointments to do a job that uses input provided by an operator (or a person). Therefore, “services,”
30 “time dependencies of services,” and “resources” are not required to be determined by a computer system,

1 but instead are determined by an operator to enable the scheduling of an appointment to do a job to be
2 carried out as yet another step of the method, which involves a number of automated steps (i.e., carried
3 out by a computing device and not by an operator or person), such as “automatically creating a plurality
4 of proposals,” “automatically selecting one of the plurality of proposals,” and “automatically revising the
5 plurality of proposals in response to said one of the plurality of proposals being selected, to
6 accommodate changes in the time availability of resources.”

7 The Examiner has rejected Claim 12 for the same reasons applied in rejecting Claim 1. However,
8 the meaning of Claim 12 should be evident to a person of ordinary skill in the art for the same reasons as
9 noted above, in connection with Claim 1. Accordingly, the rejection of Claims 1 and 12 should be
10 withdrawn. If the Examiner still feels unclear about this issue, it is again respectfully suggested that the
11 Examiner discuss the matter with his supervisor.

12 Discussion of Claim Term “Substantially” as Recited in Claim 11 (and now in Claim 1)

13 The Examiner also asserts that the term “substantially” in Claim 11 is a relative term which
14 renders the claims indefinite because the term “substantially” is not defined by the claim, the specification
15 does not provide a standard for ascertaining the requisite degree, and one of ordinary skill of the art would
16 not reasonably be apprised of the scope of the invention.

17 Applicants respectfully disagree with this position, and the Examiner is directed to review the
18 Federal Circuit case, *Verve LLC v. Crane Cams Inc.*, (November 14, 2002) wherein the term
19 “substantially” was held “not indefinite if it serves to reasonably describe subject matter so that its scope
20 would be understood by persons in field of invention ...”. The Federal Circuit has also held in *Liquid*
21 *Dynamics Corp. v. Vaughan Co., Inc.*, (January 23, 2004) that the term “substantial” was interpreted to be a
22 meaningful modifier implying “approximate” rather than “perfect.” “[S]ubstantially before” in this usage
23 (now also in Claim 1) will be understood to mean “some time before” and not “just before.”
24 “[S]ubstantially before” is not indefinite because a person of ordinary skill in the art would interpret
25 “substantially before” to mean the plurality of proposals are pre-calculated before there is an immediate
26 need to schedule an appointment, as opposed to being calculated “on the fly” just when needed.

27 A common programming technique known in the art of computer science is pre-calculating, a
28 means of performing complex or repeated calculations once up front, and using the results of these pre-
29 calculations many times. A person of ordinary skill in the art would interpret Claim 11 as pre-calculating
30 the proposals, before the operator entered a desired time, as opposed to calculating the plurality of

1 proposals “on the fly” in response to the operator’s desired time. (See applicants’ specification, page 3
2 lines 22-25). Claim 1 has been amended to recite “at a time substantially before the job is actually
3 scheduled, automatically creating a plurality of proposals,” to convey a similar meaning to a person of
4 ordinary skill in the art. The word “substantially” is a term that is commonly used in claims and is well
5 accepted as not raising any issue under § 112, particularly, where as is the case here, one of ordinary skill
6 would immediately understand that the term clearly indicates a readily understood concept – i.e., that the
7 plurality of proposals are to be pre-calculated before there is an immediate need to schedule a job. If the
8 Examiner would care to suggest an alternative approach for conveying this meaning, applicants will
9 certainly consider employing that approach to amend the claims, but such an amendment should not be
10 necessary.

11 Claims Rejected under 35 U.S.C. § 101

12 The Examiner has rejected Claim 6 under 35 U.S.C. § 101 because he believes that the
13 claimed invention is directed to non-statutory subject matter. The Examiner asserts that for a claim to
14 be useful, it must yield a result that is specific, substantial, and credible (MPEP § 2107). Claim 6 has
15 been amended to clarify that an operator is enabled to determine priority of the resources provided.
16 Thus, the method for scheduling appointments to do a job further comprises the step of *enabling* an
17 operator to determine priority. This step produces substantially the same result over and over again:
18 an operator is able to determine priority. The fact that different operators may assign different
19 priorities to the same resource, or that the same operator may assign different priorities to the same
20 resource at different times, is part of the method for scheduling appointments to do a job.

21 If applicants had claimed a method for implementing word processing, the step of enabling a
22 user to enter text in a document would clearly not be considered to be directed to non-statutory
23 subject matter, simply because an infinite variety of text might be entered. It is the fact that the
24 method enables any form of text, or in regard to applicants’ claim, enables a priority to be determined
25 that is a step of the method. The nature of the priority and how it is determined by an operator is
26 irrelevant to the steps of the method and clearly does not cause the claim to be directed to non-
27 patentable subject matter. Applicants thus respectfully request that the Examiner withdraw his
28 rejection of Claim 6 under 35 U.S.C. § 101.

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1 Claims Rejected under 35 U.S.C. § 102(e)

2 The Examiner has rejected Claims 1, 3, 5, and 8-12 as being anticipated by Wetzer et al.
3 (PGPub 2004/0162811, hereinafter “Wetzer”). It is asserted that Wetzer discloses each element
4 recited in these claims. Applicants respectfully disagree for the following reasons.

5 In the interest of reducing the complexity of the issues for the Examiner to consider in this
6 response, the following discussion focuses on amended independent Claim 1. The patentability of each
7 remaining dependent claim is not addressed in detail; however, applicants’ decision not to discuss the
8 differences between the cited art and each dependent claim should not be considered as an admission that
9 such dependent claims are not patentable over the cited references. Similarly, applicants’ decision not to
10 discuss differences between the prior art and every claim element, or every comment made by the
11 Examiner, should not be considered as an admission that applicants concur with the Examiner’s
12 interpretation and assertions regarding those claims. Indeed, applicants believe that all of the dependent
13 claims patentably distinguish over the references cited. However, a specific traverse of the rejection of
14 each dependent claim is not required, since dependent claims are patentable for at least the same reasons
15 as the independent claims from which the dependent claims ultimately depend.

16 Discussion of Wetzer

17 The Wetzer invention relates to a method for managing maintenance of equipment. (See
18 Wetzer, page 1, paragraph 1). Wetzer teaches a method for managing the maintenance, repair, and
19 overhaul (MRO) of equipment and for planning, scheduling and allocating the resources required for
20 the maintenance tasks. (See Wetzer, page 1, paragraph 7). Wetzer teaches a method employed to
21 perform MRO work on a piece of equipment (the “end item”) over the lifetime of that equipment.
22 Routine maintenance tasks are derived from the configuration database, by measuring the difference
23 in “actual physical configuration” and “desired or logical configuration,” including detailed
24 knowledge of the version of equipment and software components. (See Wetzer, page 3,
25 paragraph 21.) Additional maintenance tasks are scheduled as required by other considerations. In
26 addition to regular maintenance, emergent work is incorporated into the maintenance task database as
27 “above and beyond” the planned maintenance tasks. (See Wetzer, page 3, paragraph 22.)

28 Wetzer teaches that tasks scheduled in the task database are analyzed to identify resource
29 requirements, including at least one of “labor, materials, tools, facilities, end item location, task
30 precedence with respect to other tasks, and time span for the task.” (See Wetzer, page 3,

1 paragraph 23.) Once resources are identified, resources available in a specified time window are
2 identified, and maintenance is scheduled considering the constraints of resource availability and end
3 item availability (when the end item will be ready for use).

4 Wetzer teaches that once resources required to perform scheduled maintenance tasks are
5 identified, a preliminary resource plan is developed based on resource requirements, resource
6 availability, and the current status of the end item. The preliminary resource plan is then optimized.
7 Optimization may include the use of human intervention to set task precedence by selecting when a
8 particular task should be executed to ensure completion before (or after) a second task. Finally, once
9 an optimized resource plan is identified, resources are allocated, assigning “resources to the specific
10 end item for the specific maintenance task during the specific time window.” (See Wetzer, page 5,
11 paragraph 34.)

12 However, Wetzer does not teach or suggest creating a plurality of proposals at a time
13 substantially before a job is scheduled. Wetzer instead teaches creating a preliminary resource plan
14 proposal, and then optimizing the preliminary resource plan proposal. Wetzer teaches that an
15 optional step in optimizing the plan proposal is enabling human interaction, such as effectuating task
16 precedence. Claim 1 as amended recites “*at a time substantially before the job is actually scheduled*,
17 automatically creating a plurality of proposals that specify when the job might be scheduled during a
18 defined time period.” As discussed in applicants’ specification, creating a plurality of proposals well
19 before the job is actually scheduled is in contrast with creating a plurality of proposals “on the fly.”
20 (See applicants’ specification, page 3, line 18.) Claim 1 thus recites a method used by a service
21 provider to create a plurality of job proposals at a time substantially before a customer is scheduled
22 for a particular job. Once a particular job is scheduled, the plurality of job proposals available to
23 customers is revised based on new resource availability so that a subsequent job may be scheduled
24 using the revised plurality of job proposals. Wetzer teaches a method for maintaining an end item,
25 typically a complicated system like an aircraft, by scheduling multiple maintenance tasks “on the fly”
26 based on current resource availability, but Wetzer does not teach or suggest creating a plurality of
27 proposals at a time substantially before (i.e., well before) the job is actually scheduled. Accordingly,
28 the rejection of Claim 1 should be withdrawn.

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Claims Rejected under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 2, 4, and 6 as being unpatentable over Wetzer. The Examiner has rejected Claims 7 and 13 as being unpatentable over Wetzer as applied to Claim 1, and further in view of Crici et al. (PGPub 2005/0027580). Claims 2, 4, 6, 7, and 13 all ultimately depend from Claim 1. Claim 1 as amended recites novel and non-obvious subject matter, and so, Claims 2, 4, 6, 7, and 13 are also patentable over the cited art, since dependent claims are patentable for at least the same reasons as the independent claims from which the dependent claims ultimately depend.

In view of the amendments and Remarks set forth above, it will be apparent that all of the claims in this application define a novel and non-obvious invention, and that the application is in condition for allowance and should be passed to issue without further delay. Should any further questions remain, the Examiner is invited to telephone applicants' attorney at the number listed below.

Respectfully submitted,

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